



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL  
ATTORNEY GENERAL

March 3, 1947

Hon. F. M. Cowsert  
Director of Law Enforcement  
Game, Fish and Oyster Commission  
Austin, Texas      Opinion No. V-59

Re: Whether or not under Article 910  
of the Penal Code it is unlawful  
to kill a wild female deer.

Dear Sir:

We have your request for an opinion upon the above titled subject matter, in the last paragraph of which you say: "In the final analysis, the question is, in prosecutions under Art. 910, Penal Code 1925, is it necessary always to prove that the deer was wild?"

Article 910, insofar as pertinent, is as follows:

"It shall be unlawful for any person to take, kill, \* \* \* shoot at, hunt or possess, dead or alive any wild female deer, \* \* \*."

We shall first determine, as best we may, just what the Legislature meant by the term "wild female deer".

It is a fundamental rule of statutory construction that words used therein are to be construed in their usual, ordinary, commonly-accepted meaning, unless the contrary thereof plainly appears from the context. This rule is applicable alike to civil and penal statutes.

Art. 7 of the Penal Code declares that:

"This code and every other law upon the subject of crime which may be enacted, shall be construed according to the plain import of the language in which it is written, without regard to the distinction usually made between the construction of penal laws and laws upon other subjects \* \* \*."

The succeeding article further declares:

"Words which have their meaning specially defined shall be understood in that sense, though it be contrary to their usual meaning; and all words used in this code except where a word, term, or phrase is specially defined, are to be taken and construed in the sense in which they are understood in common language, taking into consideration the context and subject matter relative to which they are employed."

We have here the statutory yardstick by which we are to measure the words employed in Article 910. The term "wild female deer" is not specially defined in the code. It must therefore be construed as it is understood in common language, having in mind, the context. In this sense, we have no hesitancy in saying it means such a deer as is visibly free to roam as it pleases, and is not confined by an enclosure apparently sufficient to hold it, or visibly tethered or within the visible control of some person.

This construction comports with the clear purpose of this statute, that is, to prevent the slaughter of wild deer as evidenced by our policy of wild game preservation.

Within the meaning of this rule, a deer, loose on the "range" would be a "wild" deer within the meaning of the statute even though it had formerly been at any time, and for any length of time, in captivity.

It is worthy of notice that under Section 3 of the title, License for Game Breeder, of H. B. 275, Acts 1933, 43rd Leg., it is declared that "All game birds or game animals held under a game breeder's license shall remain under the full force of any or all laws or regulations of this State pertaining to wild game birds or wild game animals in order that these necessary police regulations for the preservation of native game species may be enforced to the benefit of the State."

And the succeeding section further declares: "For the purpose of this act 'captivity' is defined as an enclosure suitable for retaining, and that will retain at all times under reasonable and ordinary circumstances the bird, fowl, or animal so enclosed, and so

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far as animals are concerned, will prevent the entry into the said enclosure of any other such animal. \* \* \*

This statute would perhaps justify a stricter classification than we have made above, that is, into wild female deer and female deer in captivity.

Specifically, with respect to your last question, we beg to advise as you quite well know that it is essential in a criminal prosecution for the State to prove every fact essential to the commission of the crime charged, and this means in the present case, that the State would be required to prove that the female deer was a "wild" female deer. This could be proved, however, either by direct evidence or circumstantial evidence. Ordinarily, we think, the proving of the place where the deer was killed would afford evidence as to its character as herein defined.

#### SUMMARY

(1) The term "wild female deer" as used in Article 910 of the Penal Code, means such female deer at liberty to roam at will, as distinguished from one in captivity or visibly under control of some person.

(2) In a prosecution under that article, it would be necessary to support a conviction that the State prove that the deer killed or shot at was a "wild female deer". Such proof, however, may be made either by direct evidence or circumstantial evidence.

Yours very truly,

APPROVED

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